

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

5:21-mj-18

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHILLIP POND,

Defendant.

Filed Under Seal

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR CRIMINAL
COMPLAINT AND ARREST
WARRANT

REDACTED

I, Jerrick Myers, being first duly sworn, hereby depose and state as follows:

1. I have been employed as a Special Agent with the Federal Bureau of Investigation since September 17, 2017. I am currently assigned to a criminal squad with the Minneapolis Division of the FBI, Rapid City Resident Agency, and investigate a multitude of Federal criminal violations, including crimes in Indian country on the Pine Ridge Reservation.

2. Prior to my employment with the FBI, I served as a Missouri State Trooper with the Missouri State Highway Patrol for over three years. Through my employment with the FBI and the Missouri State Highway Patrol, I have received extensive training regarding criminal investigations.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my

knowledge about this matter. I have not withheld any information known to me that would tend to negate probable cause.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that a violation of 18 U.S.C. § 1153 and 1112 has been committed by PHILLIP POND (POND), an enrolled member of the Oglala Sioux Tribe.

PROBABLE CAUSE

5. On November 22, 2020, FBI Minneapolis Division, Rapid City Resident Agency, your affiant was contacted by Oglala Sioux Tribe (OST) Department of Public Safety (DPS) Captain John Pettigrew in regards to a shooting that had taken place in North Ridge Housing within the exterior boundaries of the Pine Ridge Indian Reservation.

6. The victim, JUSTIN LITTLE HAWK (LITTLE HAWK), also known as (aka), THOMAS HOOFF, aka, TONY WESTON, date of birth [DOB REDACTED], received a gunshot wound to the left shoulder and was airlifted to Monument Health in Rapid City, SD, for treatment. According to information provided to OST DPS by JOANN SIERRA, telephone number 605-891-8532, her grandsons, MAHPIYA ARAPAHO (ARAPAHO), date of birth [DOB REDACTED], and EMELIO ESPARZA (ESPARZA), called her and said they were with LITTLE HAWK in his vehicle and had pulled into North Ridge Housing. LITTLE HAWK and POND, date of birth [DOB REDACTED], social security number [SSN REDACTED], got into a fight/argument and POND shot LITTLE HAWK.

7. OST DPS arrived at the scene and located the vehicle where the shooting occurred. The vehicle LITTLE HAWK was driving was towed from the scene per OST DPS request and stored/secured at the OST DPS garage located at the Pine Ridge Justice Center.

8. FBI Victim Specialist (VS) Curt Lauinger and I responded to Monument Health in Rapid City. Upon his arrival to the hospital, LITTLE HAWK was immediately taken to the operating room. I was given the opportunity to take initial photographs of LITTLE HAWK's wound. At that time, LITTLE HAWK was intubated so I did not get to ask LITTLE HAWK any questions as to what happened to him.

9. On November 23, 2020, OST DPS Captain Pettigrew interviewed ARAPAHO about the incident. According to ARAPAHO, himself, LITTLE HAWK, and ESPARZA had pulled into North Ridge Housing and had stopped to turn around. At that time, POND got into the rear driver side seat of the vehicle behind LITTLE HAWK. An argument between LITTLE HAWK and POND ensued, causing ARAPAHO, ESPARZA, and LITTLE HAWK to exit the vehicle while POND remained in the back seat. LITTLE HAWK continued to argue with POND through the rear driver side window of the vehicle. At that time, POND shot LITTLE HAWK. After hearing the gunshot, ARAPAHO and EZPARZA ran off in separate directions. ARAPAHO stated he knew the shooter as PHILLIP POND and had seen him a few times within the last month and that is how he knew who he was when he got into the vehicle. ARAPAHO didn't know where POND had the gun concealed when he

got into the vehicle, but later described seeing a gun that was approximately two feet long when POND shot LITTLE HAWK. ARAPAHO did not know why LITTLE HAWK and POND were arguing.

10. On November 24, 2020, OST Captain Pettigrew interviewed SHANE TWO BULLS (TWO BULLS), date of birth [DOB REDACTED], who was present at the residence of TERRESA TWO BULLS at the time the shooting took place on November 22, 2020. During the interview, TWO BULLS told OST DPS Captain Pettigrew that approximately five to 10 minutes before the shooting took place, someone knocked on the front door to the residence. When TWO BULLS answered the door, a male subject, identified by TWO BULLS as POND, asked for TWO BULLS' sister, JODY LNU. TWO BULLS told POND that that JODY had gone home. POND then offered his condolences to TWO BULLS for the passing of his mother and shook his hand. TWO BULLS then closed the door. Approximately five to 10 minutes later, there was a loud gunshot that came from outside the residence. When TWO BULLS and ELISE TIMES went outside to see what happened, they noticed the victim's vehicle parked in their driveway with the driver slumped over the driver's seat. TWO BULLS stated that the victim's vehicle was not parked in their driveway when he was talking to POND at the door to his residence.

11. On December 11, 2020, I was informed LITTLE HAWK died at approximately 1:45AM on December 11, 2020.

12. At that time, I contacted the Adams County Coroner's Office, telephone number 303-659-1027, 330 N. 19th Ave., Brighton, CO 80601, in regards to LITTLE HAWK's death and advised them an autopsy would need to be conducted in furtherance of the referenced investigation. The autopsy was scheduled for Monday, December 14, 2020, to be conducted by Dr. Stephen Cina. FBI Denver Division Special Agent Donald Peterson was assigned to attend the autopsy on my behalf.

13. The final autopsy report prepared by Dr. Cina states the Cause of Death as: Complications following a shotgun wound to the chest.

14. On January 7, 2021, I conducted a telephonic interview of FRED BAGOLA (BAGOLA), date of birth [DOB REDACTED], social security number [SSN REDACTED], telephone number 605-899-8023. BAGOLA advised that he had spoken with LITTLE HAWK on the phone after he had been transferred to the hospital in Denver, CO. BAGOLA spoke with LITTLE HAWK after he had his 1st or 2nd surgery and was no longer sedated. BAGOLA asked LITTLE HAWK what happened the night LITTLE HAWK was shot. LITTLE HAWK didn't tell BAGOLA much about what happened leading up to the shooting but stated that he remembered POND shooting him. LITTLE HAWK described what felt like his spirit being shot out of his body. LITTLE HAWK stated his spirit then saw himself slumped over after being shot. LITTLE HAWK then described what looked like his spirit grabbing onto the gun that POND shot him with. LITTLE HAWK then looked into POND's eyes. POND saw LITTLE HAWK's spirit, became scared, and ran

away. LITTLE HAWK told BAGOLA that he had spoken to "The Creator" and had forgiven POND for shooting him.

15. On January 12, 2021, OST DPS Captain Pettigrew interviewed LASHAWN POOR BEAR (POOR BEAR), date of birth [DOB REDACTED], at the OST DPS Criminal Investigations interview room.

16. According to POOR BEAR, her mother, RITA RICHARDS (RICHARDS), told her the night before LITTLE HAWK was shot, POND and JAMIE DREAMER (DREAMER) had come to RICHARDS home looking for LITTLE HAWK. POND and DREAMER had a gun with them. RICHARDS told POORBEAR that a vehicle pulled up to the home and POND and DREAMER thought it was LITTLE HAWK. RICHARDS described to POOR BEAR that POND and DREAMER took a position like they were going to shoot the individual in the vehicle they believed to be LITTLE HAWK. The individual in the vehicle that had pulled up the house turned out not to be LITTLE HAWK. POOR BEAR was not at home when this happened as she was at her boyfriend's. However, POOR BEAR saw DREAMER with a gun later that night at her home.

17. LITTLE HAWK was the boyfriend of POOR BEAR's sister, ADAYNIA POOR BEAR (ADAYNIA), and lived with ADAYNIA. According to POORBEAR, POND messaged ADAYNIA and said it was an accident and that he (POND) did not mean to shoot him (LITTLE HAWK). Also, in the message, POND told ADAYNIA that he was hungry and cold and wanted to meet in the field beside the house. Both POOR BEAR and ADAYNIA then went out to the field next to the house and

met with POND there. POND was crying and said it was an accident. POND explained that he and LITTLE HAWK were fighting over a gun and he didn't mean to pull the trigger. POND had a gun with him while speaking with POOR BEAR and ADAYNIA in the field. ADAYNIA took the gun from POND and checked it for bullets because POND was trying to shoot himself. After checking the gun for bullets, ADAYNIA gave the gun back to POND. POOR BEAR and ADAYNIA did not let POND come into the house because they believed LITTLE HAWK's crew would be out looking for POND and there were children in the house.

18. Approximately one week before POOR BEAR was arrested on January 10, 2021, POND came by her room and asked where her son was. POOR BEAR told POND he was sleeping. POND then went to POOR BEAR's mom's room and closed the door. While POND was in there, he was crying and saying that they were fighting over a gun and he didn't mean to pull the trigger. POND also said that there were people looking for him. POND then left the house.

19. On January 20, 2021, OST DPS Captain Pettigrew and OST DPS Criminal Investigator Derek Puckett conducted a follow up interview of POOR BEAR. During the interview, POOR BEAR confirmed that the message POND sent to ADAYNIA regarding it being an accident and him (POND) not meaning to shoot him (LITTLE HAWK) was sent via Facebook Messenger. After receiving the message from POND, ADAYNIA showed POOR BEAR the message sent from POND to ADAYNIA on Facebook Messenger.

20. POND is an enrolled member of the Oglala Sioux Tribe.

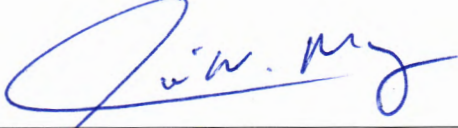
REQUEST FOR SEALING

21. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be temporarily sealed as it is part of an ongoing criminal investigation. Accordingly, there is good cause to seal these documents because their disclosure may seriously jeopardize the investigation.

CONCLUSION


22. Your affiant believes there is probable cause to arrest Phillip Pond for the charge of Voluntary Manslaughter, in violation of 18 U.S.C. §§ 1112 and 1153.

Dated: January 25, 2021



Jerrick Myers
Special Agent
Federal Bureau of Investigation

SUBSCRIBED and SWORN to in my presence this 25th day of January, 2021.



Daneta Wollmann
United States Magistrate Court Judge
District of South Dakota